IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

EXECUTIVE OFFICER, MUNICIPAL BOARD, SHAHPURA **VS.** **UDAI LAL DHAKAD & ORS.**

(S.B.C.Writ Petition No.2029/03)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. N.M.Lodha, Advocate for the petitioner.
Mr. N.L.Joshi, Advocate for the respondents.

The sheet anchor of the arguments advanced by the learned counsel for the petitioner has been that burden of proof to show that the workman had completed 240 days in a calendar year immediately preceding the date of his removal did not to lay upon the management particularly when the workman had discharged his initial burden by his affidavit and the entire record of the Board were within their exclusive control.

A perusal of the award would reveal that apart from the affidavit of the workman, the certificate given by the Chairman was taken as the basis for holding that the workman had discharged the burden of proving that he worked for 240 days in the calendar year

immediately preceding the date of his removal. As against this, the management has produced the affidavit of one Satya Narayan who had asserted that the workman did not so work for 240 days. He was the Executive Officer of the Board but when he was subjected to the cross examination, he stated that he was working at Shahpura only from 26.6.1996 and never remained posted there. He did not know the workman personally. He further stated that the workman had worked from 1992 to 1994 but the attendance register and the payment register was available with the Municipal Board and he also stated that he has not seen such records for the period from 15.5.1994 to 23.9.1995. He admitted that the certificate was issued by the Board in which work of the workman has been appreciated.

Even if on the basis of such evidence, it is accepted that the workman had prima facie proved the fact of his having completed more than 240 days in the service of the respondent, the facts remains that his appointment was made directly by order of the Chairman and the allegation of the management now is that he was so appointed only because he was related to him. The total working period of the respondent was confined to about 16 months and that too lastly upto 23.9.1995. The award was passed on

12.9.1996 and now this writ petition is being disposed of in the end of the year 2006. The rule that reinstatement should follow as a matter of course in all cases where the termination/removal is held to be illegal has since been departed from by the Hon'ble Supreme Court in various judgments. The position of law in this respect has gone a major change. There are certain judgments from this Court as well on the same subject matter which provides for award of lump sum compensation in lieu of reinstatement in appropriate cases. Their Lordships of Hon'ble the Supreme Court on this aspect have evolved very many guiding principles in number of judgments. Some of these judgments have been delivered in Rolasthan Rohan Vs. Central Industrial Tribunal, 1995 SCC (L&S) 142, Gujarat State Road Transport Corporation vs. Mulluamr, 1995 SCC (L&S), Surjeet Ghosh vs. UCCO Bank, 1995 SCC(L&S) 529, Gorabha Corporating Marketing Vs. Presiding Officer , LLR 1996(1) 644, Ratan Singh vs. Union of India, 1998 SCC(L&S) 170, Dharmveer Singh vs. State of Rajasthan, WLC (Raj.) 1999, 301(DB), Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd. , AIR 1979 SC 95, Chandu Lal vs. The management of M/s. PAN American World Airways, AIR 1985 SC 1128, Sain Steel Producdts vs. Naipal Singh & Ors. , AIR 2001 SCW 2426, O.P.Bhandari vs. Indian Tourism Development Corporation Ltd. & Ors. , (1986) 4 SCC 337, Arjun

Singh & 4 Ors. Vs. Labour Court,Jodhpur & Ors., 2004(4) WLC (Raj.) 145, U.P. State Road Transport corporation vs. Man Singh, 2006(7) SCC 752 and Nagar Mahapalika vs. State of U.P. & Ors. , AIR 2006 SCW 2497. These cases have been followed by this Court in number of Division Bench judgments in Resident Engineer Housing Board , Kota vs. Lakpath and Anr., reported in 2003(3) WLC(Raj.), 564, in State of Rajasthan vs. Rashid Mohammad in D.B.Civil Writ Petition No.406/2000, reported in 2004(5) WLC (Raj.), 463, in Arjun Singh & Ors. vs. Labour Court,Jodhpur, reported in 2004(4) WLC(Raj.), 145 and in Ram Niwas vs. Mining Engineer(D.B.Civil Special Appeal (Writ) No.270/2003), decided on 24th April, 2003.

Keeping in view the totality of the facts, I deem it appropriate to modify the award passed by the learned Labour Court and direct that instead of reinstatement, the petitioner shall be awarded a lump sum compensation of Rs.50,000/- in lieu of reinstatement which shall be paid to him within two months from the date of service of copy of this judgment. Accordingly, the writ petition is partly allowed with the aforesaid directions. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.